

To: White, Terri-A[White.Terri-A@epa.gov]; rogers, rick[rogers.rick@epa.gov]; Ryan, Daniel[Ryan.Daniel@epa.gov]
Cc: Armstead, John A.[Armstead.John@epa.gov]; Ajl, Diane[Ajl.Diane@epa.gov]; Briggs-Steuteville, Sheila[Briggs-Steuteville.Sheila@epa.gov]
From: Ferrell, Mark
Sent: Tue 6/17/2014 1:27:15 PM
Subject: RE: MCHM question CLIP

Hurricane, Putnam accuse landfill of delaying suit over MCHM it accepted

by **Ryan Quinn**, Staff writer

In the ongoing federal lawsuit over the Hurricane landfill that accepted 228 tons of Freedom Industries wastewater mixed with sawdust, the city and Putnam County are asking a judge to dismiss the landfill's motion to dismiss their case against it.

The city and county argue that, rather than countering their arguments that the landfill improperly accepted the contaminated material, the "Defendants seek, through their motion, precisely what is needed least in this matter — delay."

The governments want the material removed, a process that one of their lawyers, Mike Callaghan, has estimated could cost millions of dollars.

State Department of Environmental Protection spokeswoman Kelley Gillenwater said the material taken to the landfill was vacuumed up from the Freedom site and the Elk River immediately after the Jan. 9 spill, which fouled the water of roughly 300,000 West Virginians. The material was originally taken to a tank at the Poca Blending site in Nitro that Freedom owned, before being taken to the landfill.

The Disposal Service landfill and Waste Management, which owns the dump, filed a motion to dismiss the suit on May 29, arguing the case should be thrown out partly because the city and county didn't give a 90-day-notice of endangerment to the companies required under the federal Resource Conservation and Recovery Act before filing their complaint on May 5 in the Southern District of West Virginia.

The defendants argue that notice is required, unless the chemicals deposited at the landfill are considered "hazardous waste." The plaintiffs and defendants disagree on whether the chemicals meet that designation.

The city and county, in their request Friday that Judge Robert C. Chambers dismiss the defendants' motion to dismiss, argue the landfill and Waste Management misunderstand the Resource Conservation and Recovery Act. They also argue that the court "has the authority and responsibility to establish" a toxicity standard under the state Hazardous Waste Management Act for the chemical Crude MCHM, the main component of the Jan. 9 spill.

They argue this threshold should be 1 part per million — the same as the emergency threshold established by the Centers for Disease Control and Prevention in the hours following the Jan. 9 Freedom leak — and that concentrations above that level should be considered "hazardous waste." Disposal Service has said that DEP testing has shown the wastewater deposited in the landfill contained as much as 81 parts per million of Crude MCHM.

"Establishing this standard as a matter of federal common law will discourage businesses dealing in hazardous wastes from locating in areas states (sic) with more

lenient regulations,"the city and county argue in their motion.

A team of experts appointed by Gov. Earl Ray Tomblin concluded that even the 1 part per million level was not nearly stringent enough to fully protect public health. The West Virginia Testing Assessment Project team suggested a screening level eight times more stringent.

The landfill accepted deposits of the material from Feb. 25 until March 13, after residents near the landfill smelled the infamous licorice odor and public backlash ensued. The remaining material from that tank has been shipped out of state.

Mark Ferrell

EPA Region 3

Office of State and Congressional Relations

West Virginia Liaison

Charleston, W.Va.

(304) 542-0231

From: White, Terri-A

Sent: Monday, June 16, 2014 5:28 PM

To: rogers, rick; Ryan, Daniel

Cc: Armstead, John A.; Ajl, Diane; Briggs-Steuteville, Sheila; Ferrell, Mark

Subject: RE: MCHM question

Ex. 5 - Deliberative

From: rogers, rick

Sent: Monday, June 16, 2014 4:52 PM

To: Ryan, Daniel; White, Terri-A

Cc: Armstead, John A.; Ajl, Diane; Briggs-Steuteville, Sheila

Subject: FW: MCHM question

Ex. 5 - Deliberative

<<<<<<<<<<<<<>>>>>>>>>>>>

Freedom_0004310_0003

From: Ajl, Diane
Sent: Monday, June 16, 2014 3:35 PM
To: Armstead, John A.; rogers, rick
Cc: Briggs-Steuteville, Sheila
Subject: FW: MCHM question

Hi John and Sheila –

See the revised MCHM letter to WVA above.

Questions? Please don't hesitate to give Sheila or me a call.

Thanks –

Diane

From: Briggs-Steuteville, Sheila
Sent: Monday, June 16, 2014 3:32 PM
To: Ajl, Diane
Subject: MCHM question

Hi Diane,

Here is the revised letter based on Marcia's comments.

Thanks,

Sheila